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17 UNITED STATES DISTRICT COURT
18 EASTERN DISTRICT OF CALIFORNIA
19 SACRAMENTO DIVISION
20

21 WILLIAM ROUSER,

22 Plaintiff,

23 v.

24 THEO WHITE, et al.,

25 Defendants.
26
27
28

Case No. 2:93-cv-0767-LKK-GGH(PC)

JOINT SETTLEMENT AGREEMENT

Judge: Hon. Lawrence K. Karlton

1 **Jurisdiction**

2 1. The Court has jurisdiction over the parties and subject matter of this action.

3 2. Within 30 days of the execution of this Joint Settlement Agreement
4 ("Agreement"), the parties will file in the Ninth Circuit a joint motion to dismiss the appeals
5 without prejudice. Once the court grants this motion, the parties will bring in the district court 1)
6 a joint motion to approve this Agreement and enter it as a consent decree, and 2) a joint motion
7 for change of venue as discussed in paragraph 52. Should the district court not approve the
8 Agreement, or not grant the motion for change of venue, appellants may reinstate the appeals. If
9 the district court approves both the Agreement and the change of venue, the Ninth Circuit will
10 deem the appeals dismissed with prejudice.

11 **Parties**

12 3. The parties to this stipulation are plaintiff William Rouser (C-10659) and
13 defendants Mathew Cate, Secretary of the California Department of Corrections and
14 Rehabilitation (CDCR), and Brenda Cash, Warden of the California State Prison – Los Angeles
15 County (CSP-Los Angeles County).

16 4. Defendants agree that this Agreement is binding on their agents and successors in
17 office.

18 **Dismissal of Claims**

19 5. The claims against defendants Gomez, White, Yates, Flores, and Ortiz for
20 damages and injunctive relief in this action are dismissed with prejudice.

21 6. Within thirty days of the Court's order approving this Agreement, Rouser shall
22 voluntarily dismiss with prejudice the actions in *Rouser v. Timm, et al.*, Fresno County Sup. Ct.
23 No. 09CECG01591; *Rouser v. Chaplain McGee, et al.*, Fresno County Sup. Ct. No.
24 09CECG01301AMS; *Rouser v. Fortson, et al.*, Los Angeles County Sup. Ct. No. MC021510; and
25 *Rouser v. Myers, et al.*, Fresno County Sup. Ct. No. 09CECG03670.

26 **General Provisions and Disclaimers**

27 7. The parties enter this Agreement to avoid the continuation of expensive,
28 protracted, and adversarial litigation.

8. By entering this Agreement, the parties waive specific findings of fact and conclusions of law, and any determination whether the remedies provided are legally required.

9. By entering into this Agreement, defendants do not admit any violation of law.

10. This action is not a class action on behalf of all Wiccan inmates in the California Department of Corrections and Rehabilitation institutions. Therefore, provisions of this Agreement may not be used as evidence in any other proceeding, except enforcement proceedings in this action; and the provisions of this Agreement will not have issue or claim preclusion effect on any other case that may now exist, or that may arise in the future.

Access to Personal Religious Items

11. Defendants shall permit Rouser access to the following approved personal religious items, subject to the provisions of California Code of Regulations, title 15, § 3213, as follows:

a. J. and S. Farrar, A Witches Bible Compleat (Magickal Childe Publ, Inc. (1991);

b. Book of Shadows;

c. Other religious literature, subject to policies and procedures applicable to inmate access to approved inmate literature;

d. Tarot cards (one deck);

e. Oils (kyphi, frankinmyrrh, sage, cedar, or lavender), with a maximum of four ounces of oil total, ordered and received per calendar quarter, and no more than a total of four ounces of approved oils in Rouser's personal possession at any given time;

f. Herbs (mint, cedar, sage, lavender);

g. Stones (5), no larger than one inch in diameter, or (10), no larger than one-half inch in diameter;

h. Feathers (4);

i. Pentagram, or other approved Wiccan medallion, that does not exceed 1.5 inches in diameter and neck chain, that does not exceed 24 inches in length. The total value of the medallion and chain may not exceed \$100 in commercial value;

j. Seashells (one package of 18 shells as sold by approved vendor), the individual shells not larger than one-half inch in diameter.

12. If the number or quantity of religious articles, as sold by an approved religious vendor, exceeds that which is allowed, Rouser will be given the option of placing the excess religious property in his stored property, sending the excess property home, or having it destroyed.

13. If Rouser is sent to Administrative Segregation or a Security Housing Unit (SHU), defendants will maintain and store Rouser's personal religious items pending his release from Administrative Segregation or SHU, except that Rouser will be permitted to have his Wiccan Bible in his possession throughout the duration of any confinement in Administrative-Segregation or SHU to the same extent that prisoners of other religious faiths are allowed to have a religious text in those housing units.

Wiccan Group Services and Religious Study Groups

14. Prison officials shall provide Rouser reasonable opportunities to participate in Wiccan group religious services, called esbats or sabbats, and to attend religious study groups that are comparable to group religious services and study provided inmates of other religions, taking into account factors such as the number of inmates, available space, safety and security, resources, and administrative considerations, so long as those factors are also considered in determining the access of other religious groups to regularly scheduled group religious activities.

15. Rouser shall have the opportunity to attend regular Wiccan group services, called esbats, once a week, subject to the provisions of California Code of Regulations, title 15, §3210(c).

16. Prison officials shall provide Rouser the opportunity to attend the following special religious services, called sabbats:

- a. Imbolg – February 2;
- b. Spring Equinox – March 21;
- c. May Day – May 1;
- d. Midsummer – June 21;

- e. Lughnasadh – August 1;
- f. Autumn Equinox – September 21;
- g. Samhain – October 31;
- h. Yule (Winter Solstice) – December 23.

Prison officials shall use their reasonable efforts to schedule the sabbats on the dates identified, but may schedule them on other dates, where necessary. If a scheduled sabbat is cancelled for administrative reasons (such as maintenance or staff shortages), prison officials shall reschedule the sabbat at the earliest practicable date. When a sabbat is cancelled because of a lockdown or inmate-caused safety or security concern, the sabbat will not be rescheduled.

17. If the institution where Rouser is housed provides inmates the opportunity to attend religious study groups, Rouser shall also be provided the opportunity, comparable to that afforded inmates of other religious faiths, to attend a Wiccan religious study group for one hour, once a week. Wiccan religious study groups are separate and apart from esbats and sabbats, and shall be scheduled on different days than esbats and sabbats.

18. When attending a Wiccan esbat, sabbat, or group study, Rouser must be processed into the location where the event is to be held by the facility Chaplain, volunteer Wiccan minister, or other staff. Rouser must surrender his identity card to processing staff before entering, and must sign in for each event. Rouser's identification card will be returned when he exits the location where the event is being held.

Schedule, Time, Location, and Announcement of Services

19. A master schedule of facility religious services and religious study groups that includes the time and location of Wiccan events will be posted in the facility's non-denominational chapel and each building in the facility. Copies of the master schedule will be provided to the Associate Warden for Programs and Housing, the Associate Warden for Central Services, the Community Partnership Manager, the Facility Chaplain, and the Facility Captain.

20. The time and location of Wiccan group religious events shall be announced in the same manner and to the same extent as announced for religious events of other religious groups.

1 21. In place of access to the facility's nondenominational chapel, Wiccan esbats and
2 sabbats shall be held on the outdoor religious activity area designated by the institution for
3 outdoor religious activity. Prison officials shall have a reasonable time, no longer than sixty days
4 from the date this Agreement is approved by the Court, to make necessary arrangements to
5 provide access in accordance with institutional operational concerns to promote equitable access
6 to prayer areas.

7 22. Rouser shall have access to a fire pit on the outdoor worship area on the sabbats.
8 The fire pit shall not exceed twelve inches in diameter. Use of the fire pit shall be in accordance
9 with institutional safety and security concerns, including applicable fire safety regulations.

10 23. If the facility permits religious study groups, Rouser will be allowed to attend a
11 Wiccan study group on either the facility's outdoor religious activity area, or in the facility's non-
12 denominational chapel. Rouser will be allowed to bring his approved religious text, his religious
13 necklace, and a small spiritual bag containing stones. If inmates of other religious faiths are
14 allowed to bring additional personal religious articles to group services, Rouser will be allowed to
15 bring his personal religious articles comparable to those inmates of other religious faiths are
16 allowed to bring to their study groups.

17 24. Prison officials understand that a typical Wiccan esbat takes approximately one
18 hour to complete, and a typical sabbat takes approximately two hours to complete. Rouser will be
19 provided time for esbats and sabbats comparable to that provided to inmates of other religious
20 faiths for religious activities at the California State Prison – Los Angeles County, or at another
21 institution, if Rouser were to be transferred during the life of the Agreement. The time within
22 which a scheduled esbat or sabbat is to take place will be sufficient to allow Rouser and other
23 Wiccans attending the service to be released from their buildings, travel to the location of the
24 service, and complete the service. The parties recognize that prison officials may not provide the
25 full one or two hours for completion of the esbat or sabbat service on those occasions when
26 institutional safety, security, or administrative reasons require that less time be provided. Prison
27 officials shall use reasonable efforts to ensure that Wiccan religious services and study groups are
28 not shortened or cancelled more often than those for inmates of other religious faiths.

1 **Religious Articles Approved for Group Services or Study Groups**

2 25. If prison officials provide food for special religious observances of other religious
3 groups, they shall provide food for Wiccan sabbats, in accordance with California Code of
4 Regulations, title 15, § 3053.

5 26. If prison officials allow inmates to bring food or canteen items to religious services
6 or study groups, Rouser will be allowed to bring food or canteen items comparable to those
7 allowed inmates of other religious faiths.

8 **Persons Who May Lead Wiccan Group Services**

9 27. An approved volunteer Wiccan minister may attend and lead Wiccan esbats,
10 sabbats, and religious group study sessions, provided that the minister has complied with
11 institutional policies and procedures for approval and access by volunteer ministers.

12 28. If the institution where Rouser is confined has an approved volunteer Wiccan
13 minister, the volunteer shall lead Wiccan esbats, sabbats, or group study sessions, subject to his or
14 her availability.

15 29. If the volunteer Wiccan minister is not available, a Wiccan inmate will be
16 designated to facilitate the service or group. The inmate religious service facilitator will be
17 selected by the Warden or his designee from a list of Wiccan inmates who have been found
18 qualified by the volunteer Wiccan minister and approved by the Warden to serve as an inmate
19 religious facilitator. Rouser may apply to be qualified and approved for inclusion on that list,
20 based on criteria applicable to other inmate applicants.

21 **Approved Wiccan Religious Items for Religious Group Sessions**

22 30. Prison officials shall permit Rouser to have access to the following items for
23 Wiccan esbats and sabbats:

- 24 a. Candles and candleholders (7) in accordance with institutional safety and
25 security concerns, including applicable fire safety regulations;
- 26 b. Stick or cone incense (6) and an incense holder;
- 27 c. Anointing oils (kyphi, frankinmyrrh, sage, cedar, lavender), with a
28 maximum of four ounces of oil total, ordered and received per calendar quarter, and no

more than a total of four ounces of approved oils in Rouser's personal possession at any given time;

- d. Chalice or ritual cup (1);
- e. Small bell (1);
- f. Water;
- g. Salt;
- h. Tarot cards (two decks);
- i. Altar (1), no larger than two-by-two-by- four feet in size, and (1) similarly sized altar cloth;
- j. Drum (1) of a type approved by prison officials;
- k. Feathers (4);
- l. Herbs (mint, sage, cedar, lavender);
- m. Small picture or statue of deities;
- n. Stones (5), no larger than one inch in diameter, or (10), no larger than one-half inch in diameter;
- o. Wood wand (1), no larger than the size of an approved inmate pencil (not sharpened);
- p. Seashells (one package of 18 shells as sold by approved vendor), the individual shells not larger than one-half inch in diameter.

31. Prison officials shall have custody and control of Wiccan group religious items when they are not in use.

32. Prison officials shall develop a procedure that allows the volunteer Wiccan minister, facility Chaplain, or approved inmate leader to obtain access to Wiccan group worship articles in a timely manner for use at Wiccan esbats and sabbats.

33. Inmate personal religious items shall not be allowed at Wiccan group services, except an approved religious text, religious necklace, and a small spiritual bag containing stones.

34. By agreeing to permit Rouser access to approved religious personal and group religious items, prison officials do not agree that they are obligated to pay for those items.

1 **Ordering Religious Articles**

2 35. Rouser may order and receive Wiccan religious items consistent with policies and
3 procedures set forth in the California Code of Regulations, title 15, § 3190 and the Departmental
4 Operations Manual (DOM) § 54030.7.1.

5 **Inmate Clerk**

6 36. If the facility where Rouser is confined provides an inmate work assignment as a
7 clerk to the facility Chaplain, Rouser may apply for and be considered for such an assignment, in
8 accordance with California Code of Regulations, title 15, §§ 3040 et seq., and based on criteria
9 applicable to other inmate applicants.

10 **Construction of the Agreement**

11 37. Nothing in this Agreement bars prison officials from temporarily suspending its
12 provisions in the case of an emergency; where necessary to ensure the safety and security of the
13 institution, inmates, or staff; or when Rouser is confined in Administrative Segregation or SHU.

14 38. Nothing in this Agreement bars prison officials from restricting Rouser's access to
15 and use of any personal or group religious items when prison officials determine that he has
16 modified those items or used them for a non-religious purpose, or that their use threatens the
17 safety and security of the institution, inmates, or staff.

18 39. This Agreement contains the parties' entire agreement and supersedes any prior
19 written or oral agreements between them. No extrinsic evidence whatsoever may be introduced
20 in any judicial proceeding to provide the meaning or construction of this stipulated agreement.
21 Any modification to the terms of this Agreement must be in writing and be signed by a
22 representative of the parties and approved by the Court to be effective or enforceable.

23 40. This Agreement shall be governed by and be construed according to California
24 law. The parties waive any common law or statutory rule of construction that ambiguity should
25 be construed against the drafters of this Agreement, and agree that the language in all parts of this
26 Agreement shall in all cases be construed as a whole, according to its fair meaning.

27 41. The obligations governed by this Agreement are severable. If for any reason a part
28 of this Agreement is determined to be invalid or unenforceable, such determination shall not

1 affect the remainder. Notwithstanding the foregoing, if the court does not order a change of
2 venue as set forth in paragraph 52, the Agreement shall become void and have no further effect.

3 42. The waiver by one party of any provision or breach of this Agreement shall not be
4 deemed a waiver of any other provision or breach of this Agreement.

5 43. The terms of this Agreement shall apply to Rouser at any institution under CDCR
6 jurisdiction to which he may be assigned, and shall be implemented in a manner that takes into
7 account the particular safety, security, and administrative concerns of that institution. If Rouser is
8 transferred to another institution, prison officials shall have thirty days from the date of transfer to
9 comply with the provisions in this Agreement.

10 44. The parties agree that any claim concerning Rouser's right to possess a Wiccan
11 sigil as approved religious property, or to use a Wiccan sigil in personal or Wiccan group
12 religious services or activities, is not at issue in this action, or subject to the terms of this
13 Agreement, including paragraph 51. The parties further agree that nothing in this Agreement bars
14 prison officials from prohibiting possession or use of a sigil, and that nothing in this Agreement
15 bars Rouser from challenging such a prohibition in another judicial action or proceeding.

16 **Compliance**

17 45. If Rouser believes that defendants have not complied with the terms of the
18 Agreement, he will submit an inmate appeal (CDCR 602). The informal, formal, and first levels
19 of appeal will be bypassed, as provided for in California Code of Regulations, title 15, §
20 3084.5(b), and the appeal will be processed at the second level by the Warden or his or her
21 designee, such as the Community Partnership Manager or Chief Deputy Warden. The parties
22 further agree that, if Rouser is dissatisfied with the second-level review, he must appeal to and
23 properly exhaust his remedies at the Director's level before seeking relief from the district court.
24 Copies of the CDCR 602 and responses shall be provided to the parties' attorneys of record, if
25 any, who will meet and confer in an effort to resolve the dispute, before a motion is filed with the
26 court.

Nature and Termination of the Agreement

46. This Agreement shall be entered into the record with the District Court as a consent decree under 18 U.S.C. § 3626(c)(1) and shall be made subject to the Court's enforcement.

47. One year after the order approving this Agreement is filed, defendants may move to vacate the order, dismiss this action with prejudice, and enter judgment on the ground that a preponderance of the evidence shows that they have substantially complied with the terms of this Agreement.

48. In consideration of Rouser's dismissal of certain claims, as set forth in paragraphs 5 and 6 of this Agreement, defendants agree to pay, on or before 150 days following the Court's order approving the Agreement and its filing in the record, the total sum of \$30,000 to Rouser's attorney of record, Jones Day, which represents a compromise of amounts to which Rouser claims he would be entitled to as legal costs, including attorney's fees.

49. The parties shall bear their own attorney's fees.

50. As to paragraphs 21 and 48 of this Agreement, defendants intend to comply within the times set forth in those paragraphs, but the parties understand that payment of costs associated with provision of the outdoor religious activity area and attorney's costs may take up to 180 days from the order approving the settlement. The parties further understand that payment is contingent on funding, including the timely adoption of a State budget, and that additional delays may occur that are not within defendants' control. No interest shall be payable under this Agreement for such delays.

51. With the exception of the claim or claims referenced in paragraph 44, it is the intention of the parties in signing this Agreement that it shall be effective as a full and final accord and satisfaction and release for all claims that were, or could have been asserted in the Complaint against Defendants. By signing this Agreement, Plaintiff releases the Defendants and all other persons from all claims, known or unknown, with the exception of the claim or claims set forth in paragraph 44, which arise or could arise from the facts alleged in the Complaint against any and all Defendants who are or ever were parties to this lawsuit.

1 In furtherance of this intention, each of the parties acknowledges that they are familiar
2 with, and expressly waive, the provisions California Civil Code section 1542, which provides:

3 "A general release does not extend to claims which the creditor
4 does not know or suspect to exist in his or her favor at the time of
5 executing the release which if known by him or her must have
6 materially affected his or her settlement with the debtor."

7 This settlement is the compromise of various disputed claims and shall never be treated as
8 an admission of liability by any of the parties for any purpose. The signature of or on behalf of
9 the respective parties does not indicate or acknowledge the validity or merits of any claim or
10 demand of the other party.

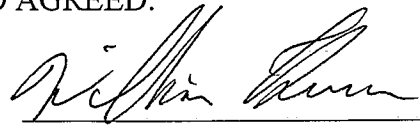
11 52. The parties agree to a transfer of venue from the United States District Court for
12 the Eastern District of California to the United States District Court for the Central District of
13 California, and that Defendants will prepare a joint motion and order transferring venue
14 concurrently with the filing of the Agreement. The parties agree that their Agreement is
15 conditioned on the court ordering a change of venue, and that their Agreement will void and have
16 no effect, if that Court does not order the change in venue.

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18 [SIGNATURE PAGE FOLLOWS]
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IT IS SO STIPULATED AND AGREED.

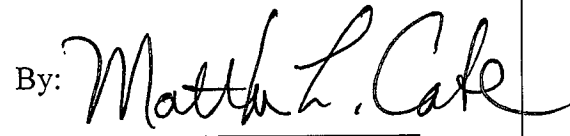
For the Plaintiff

DATED: 7-15-2011



WILLIAM ROUSER

For the Defendants:

DATED:

By: 
MATTHEW CATE
Secretary
California Department of
Corrections and Rehabilitation

DATED:

By: 
TERRI MCDONALD
Director (A), Adult Institutions
California Department of
Corrections and Rehabilitation,

DATED:

By:
BRENDA CASH
Warden
California State Prison,
Los Angeles County

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IT IS SO STIPULATED AND AGREED.

For the Plaintiff

DATED:

WILLIAM ROUSER

For the Defendants:

DATED:

By:

MATTHEW CATE
Secretary
California Department of
Corrections and Rehabilitation

DATED:

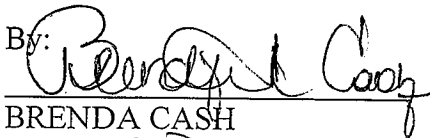
By:

TERRI MCDONALD
Director (A), Adult Institutions
California Department of
Corrections and Rehabilitation,

DATED:

8/19/11

By:



BRENDA CASH
Warden (A)
California State Prison,
Los Angeles County